

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 290 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy
of the judgement? Yes

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

GUJ STATE GOVT COLLEGE LAB STAFF ASSOCIATION

Versus

STATE OF GUJARAT

Appearance:

MR DG CHAUHAN for Petitioners

M/S MG DOSHIT & CO for Respondent No. 1

MR.NV ANJARIA with MR SN SHELAT for Respdt.No.5

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 22/12/97

ORAL JUDGEMENT

1. The petitioners- Staff Union complains that in
the matter of pay scales, the Laboratory Assistants
working under the Directorate of Higher Education have

been discriminated and paid lower pay scale compared to the Laboratory Assistants working in the Primary Teachers Training Colleges, and have prayed that the respondents should be directed to pay to these Laboratory Assistants the pay scale of Rs. 175- 345 with effect from 1971, Rs. 350-600 from 1973, Rs. 1330 -2400 from 1986 and all other consequential benefits like arrears of increments, pay fixation and interest.

2. It is submitted that the Laboratory Assistants working under the Directorate of Education and those working in the Primary Teachers Training Colleges are identically and similarly situated and there cannot be any discrimination and denial of equal pay for equal work.

3. These Laboratory Assistants are being paid the pay scale as per the pay scales recommended by different Pay Commissions, namely Sarela Pay Commission, Desai Pay Commission, Ahmedli Pay Commission substituted by Central Pay Commission.

4. In the affidavit in reply (page 2), in a tabular statement, pay scales from time to time have been shown and it is submitted that both in the Government and Non-Governmental Colleges, the posts of Laboratory Assistants have been sanctioned prior to 1960.

5. It is further submitted in the affidavit-in-reply that in Primary Training Colleges and Uttar Buniyadi Training Colleges, the posts of Laboratory Assistants were sanctioned for the first time with effect from 18.8.1971 by G.R. (annexure I to the affidavit in reply). The said Government Resolution states that under the project, the posts of Laboratory Assistants are created for a period from 16.8.1971 to 29.2.1972. It appears that these posts have been continued from time to time. In 1984, Gujarat Educational Institutions (Pre-Primary and Primary Teachers Training Colleges) Rules 1984 have been enacted. An extract of these gazetted rules is at annexure II to the affidavit in reply. These rules also prescribe for the post of Laboratory Assistant, the educational qualification and pay scale of Rs.175 - 345 which was revised to Rs.350-600 as a result of Desai Pay Commission and to Rs. 13502400 in Fourth Pay Commission. It is also stated that the pay scales of Laboratory Assistants in Government Colleges recommended by Desai Pay Commission were lower than the pay scales of Primary Teachers Training Colleges. The representations made by the petitioner-association have been referred and it is stated as under:-

"xxxxxx According to the thinking of the Government, the posts of Laboratory Assistants in Primary Training Colleges and Uttar Buniyadi Training Colleges were sanctioned as a part of a project and their pay scales were erroneously fixed at Rs. 175- 345, when the posts were created in 1971. The Government felt that the pay scales of Laboratory Assistants in Government and Non- Government colleges could not be fixed on the basis of erroneously fixed pay scales of Laboratory Assistants in Primary Training Colleges, Uttar Buniyadi Training colleges. The Government, therefore, did not accept the proposal for revising the pay scales of Laboratory Assistants in Government and Non Government Colleges. In the meanwhile, the 3rd Pay Commission (Desai Pay Commission) was appointed, and that Commission also did not accept the proposal for giving the same pay scale to the Laboratory Assistants in Government and Non Government Colleges as in the Primary Teachers Training Colleges and Uttar Buniyadi Training Colleges. The Desai Pay Commission also recommended the pay scale of Rs. 260- 430 for SSC Laboratory Assistants and the pay scale of Rs. 260- 350 for Non SSC Laboratory Assistants. Thereafter, on the formation of the IV Pay Commission on the principle of pay scale to pay scale adjustment, pay scale of Rs.1150- 1500 for SSC Laboratory Assistants and pay scale of Rs. 950- 1400 for Non SSC Laboratory Assistants were sanctioned. It is further added that as there was an anomaly between the pay scale of Laboratory Assistants of Primary Training Centres and Government Colleges, Government have revised the pay scales of Laboratory Assistants of Primary Training Colleges to that of Laboratory Assistants of Government Colleges from 1986 vide G.R.dated 17.7.1989. "

6. By the Government Resolution dated 17th July 1989 which is at annexure III to the affidavit in reply, the pay scale of Rs. 1150- 1500 is given to the Laboratory assistants of both Primary Teachers Training Colleges as well as Government Colleges. It is, therefore, submitted by the respondent authorities that the pay scale of Rs. 175-345 which was given to the Laboratory Assistants in Primary Teachers Training Colleges was given when the project was started and it was given erroneously and that

error and anomaly has been rectified in the year 1989 and it is submitted that granting the prayers of the petitioners would result into creating large number of anomalies while attempting to remove one anomaly and will result into many inequalities. It is submitted that different Pay Commissions have undertaken a detailed study and put certain classes of cadres and employees in a given pay scale on the basis of their inherent equality, similarity and economic value of the services, and disturbing such structure would create large number of unimaginable anomalies.

7. The learned Counsel for the petitioners has submitted that the Laboratory Assistants getting two different pay scales though similarly and identically situated, the Government cannot deny "equal pay for equal work" and the same pay scale to both the categories.

8. Reliance has been placed on the Supreme Court judgment in the case of Ranbirsinh Vs. Union of India, AIR 1982 SC 879, particularly paras 6 to 8. It was a case of drivers in Delhi Police Force and drivers in Railway Protection Force and merely belonging to different departments was held to be not a sufficient circumstance to justify different pay scales and the Supreme Court observed that if merely belonging to different departments were to be a sufficient circumstance to justify different scales of pay, the scales of pay of officers of the same rank in the Government may vary from department to department notwithstanding that the powers, duties and responsibilities are identical. The Supreme Court observed that "We concede that equation of posts and equation of matters are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for Courts but we must hasten to say that where all things are equal, that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments." The Supreme Court observed that the principle "equal pay for equal work" is not an abstract doctrine, but one of substance.

9. In the case of State of Madhya Pradesh Vs. Pramod Bhartriya and ors., AIR 1993 SC 286, para 12 is relied upon. There, the stress is upon similarity. It is observed therein that what is important and crucial is whether they discharge similar duties, functions and responsibilities.

There is no difficulty in accepting the principle "equal pay for equal work". In fact, this principle is so elementary and well established that no authority need be cited for the purpose. The question is of application of the principle to the facts of a given case. According to the petitioners, they are identically and similarly situated to Laboratory Assistants working in Primary teachers Training Colleges and admittedly, the later have been paid higher pay scales all these years and that has been denied to the petitioners. The petitioners conveniently restrict their comparison to this category only. All the Pay Commissions have grouped together a number of cadres of the same department as well as of different departments into a particular pay scale depending on their study and perception of commonality and similarity. Common categories are the subject matters of extensive consideration by Pay Commission. Chapter X of the Second Pay Commission Report deals with Common Categories so also Chapter XII of the Third Pay Commission Report deals with Common Categories.

Large number of categories have been put into common pay scales; for example, regarding Laboratory Assistants, para 26 of Chapter X of Second Pay Commission Report reads as follows:-

"(ii)Laboratory Assistants:

26. This staff works under Laboratory

Technicians or under Head of Laboratory in Colleges or Schools. The pay scales vary; in some cases, the basic entry qualification is SSC or Intermediate Science, while in some other cases, non-matriculates with in-service experience hold such posts. The Staff representatives pointed out that they have absolutely no scope for promotion and many of them are stagnating. They have, therefore, asked for a higher scale than the pay scale for clerks. While prospects of promotion are relevant for determination of pay scale for a cadre, the basic qualification and nature of job cannot be overlooked. The posts are found to be on the scales of (i) Rs.135-250, (ii) 130-240, (iii) 100-180 (Pre-revised) and (iv) Rs. 110-140. As the duties are uniform, the Commission considers that in all cases where the entry qualification is prescribed to be mere SSC or Intermediate Science (Now F.Y.Science), the posts should be placed on the scale of Rs. 260-430; in case of non-matriculates the pay scale should be Rs. 260-350."

The same pay scale of Rs. 260-350 has been given to other large number of categories other than Laboratory Assistants showing that these categories though heterogeneous, have similar economic value and in that sense, they are similarly situated and they should be paid equally and "equal pay for equal work".

10. Chapter 12 of Third Pay Commission Report deals with Common Categories. The relevant paras read as follows:-

" COMMON CATEGORIES:

It is inherent in the scheme of things laid down by us in the structure of scales that while recommending the revised scales for each post in the Government Departments, certain posts in different departments have to be identified as posts of similar duties and responsibilities and as of comparable standards of qualifications which can be bracketed in a common group for the purpose of assigning a common scale. This is essentially a continuation of the process of rationalisation and simplification. As the structure suggested by us lays down scales in which a single scale has to serve a plurality of posts, an attempt to identify common category posts in the departments on the basis of commonly applicable criteria follows as a natural corollary. We believe that such an attempt will narrow down considerably the detailed task of assigning a scale to each post and will help in reducing much of the avoidable repetition and duplication.

2. Grouping of posts into common categories is not a novel exercise. The Second Central Pay Commission recognised the need for grouping common category posts. It attempted to identify a number of common categories such as Scientific and Engineering staff, Medical staff, Workshop staff, Store Keepers, Office staff, Teachers, Drivers, etc. in the Departments of the Central Government. The Third Central Pay Commission also grouped into common category, posts which were substantially comparable as regards duties and responsibilities modes of recruitment and qualification standards and recommended a uniform scale of pay for each such common category. Although the nature of common category

in the Departments of the Central Government may not be identical on all fours with those in the Departments of the State Government, it is possible to adopt the same criteria to carve out and group into common category a number of posts spread over a number of Departments. The First (Gujarat) Pay Commission, while evolving the pay scales, not only grouped posts in the same Department to fit into one pay scale but also brought at one place common category posts of different Departments to fall into common pay scales. The Second (Gujarat) Pay Commission devoted a special/ Chapter under the caption "Common Categories" (Chapter 10). It observed that " in multipartite administrative organisation, certain categories of posts, namely, Peons, Clerks, Senior Clerks, etc. are found in large number of offices while some other categories namely, Surveyors, Draftsman, etc. may be present in a few Departments". It held that although such posts might be borne on the respective Departmental cadres and the exact job specification may be different, the duties and responsibilities attached to each of such groups may still be fairly/ comparable and, therefore, there should be a common denominator to determine the pay scales of each of such groups. Accordingly, besides Class IV and ministerial posts, where comparison was undisputed, other posts of technical nature were also identified to be grouped as common category posts.

3. As a result of attempts made by previous Pay Commissions, the concept of common category has by now become fairly clear. The criteria have also clearly emerged for determining the posts as common category posts. xxxxxxxx xxxxxx "

In para 18, relating to Laboratory staff, the Third Pay Commission placed Laboratory Assistant in two categories i.e. Rs. 260-430 for SSC and Rs. 260-350 for non-matriculantes. It reads as follows:-

"18.Laboratory Staff:

Laboratory staff exists at various levels mainly in the Departments of Medical, Health, Cottage Industries, Archaeological, Fisheries, etc. The lowest post is that of Laboratory Assistant, The Second (Gujarat) Pay Commission recommended the

pay scales for two categories of Laboratory Assistants viz. (i) Rs. 260-430 in all cases where the entry qualification is prescribed to be SSC or Intermediate Science or First Year Science after Higher Secondary and (ii) Rs. 260-350 in the case of non-matriculates. There is no uniformity in the designations for the posts. It is desirable that all the posts at this level for which the recruitment rules are common should be grouped under one designation viz. Laboratory Assistant. The post higher than that of Laboratory Assistant is that of Laboratory Technician. The Second (Gujarat) Pay Commission recommended two scales for Laboratory Technicians viz. (i) Rs. 380- 600 and (ii) Rs. 425-700. The Government accepted the recommendation with modification in the training qualifications. As such, the scale of Rs. 380- 600 is given to a Laboratory Technician with the following conditions: (i) for other than those who are working in hospitals and are B.Sc. plus Training or B.Sc. Second Class or B.Sc. plus 3 years' experience, Rs. 425-700 may be given; and (ii) for those who are working in hospitals, the scale of Rs. 425-700 may be given if the following conditions are satisfied: (a) if the person is B.Sc. Second Class or B.Sc. with 3 years' experience or B.Sc. with Training or (b) Inter Science with 3 years' experience as Technician or Technical Assistant and Training as prescribed by the Department, or (c) SSC with 5 years' experience as Technician or Technical Assistant and training as prescribed by the Department. As such, there are two scales existing for the posts of Laboratory Technicians. We recommend the scales for Laboratory staff as under:-

Category	Existing scale (Rs.)	Recommended scale (Rs.)
1. Laboratory Technician	(i) 425-700 (ii) 380-600	(i) 1050- 1875 (ii) 980- 1620
2. Laboratory Assistant	(i) 260-430 (ii) 260-350	(i) 730- 1150 (ii) 730- 1010 "

The Third Pay Commission also placed large number of other categories in the same pay scale of Rs. 260-430.

11. The Laboratory Assistants working in the Directorate of Higher Education fall into the category of this pay scale which is considered by the Pay Commissions as just and equitable and in fact on application of "equal pay for equal work". Now, the petitioners' claim is that they are similarly and identically situated as the Laboratory Assistants working in Primary Teachers Training Colleges and they should be paid higher pay scale. If this is done to remove the anomaly or inequality, it is directly causing many more anomalies and inequalities. All those similarly and identically situated groups and classes in the same bracket and pay scales may be requires to be given the same treatment as the petitioners are claiming to be given to the Laboratory Assistants only. When the Laboratory Assistants are similarly situated to those 20 categories getting the same pay scale of Rs. 260-430 (or 730 it would be anomalous to say that they are to be separated from that class and made unequal from that class by giving them the pay scale of Laboratory Assistants in the Primary Teachers Training Colleges. Removing one inequality would directly result into creating many more inequalities.

12. On the other hand, the higher pay scale given to the Laboratory Assistants in Teachers Training Colleges was as a result of starting of the particular project in the year 1971 and as is seen from the Government affidavit, the higher pay scale was given erroneously. This error or illegality cannot be extended and perpetuated and the benefit illegally given or erroneously given cannot be made a ground for getting equal treatment. The Government has sought to correct the error by issuing a Government Resolution of 1989 by putting the same pay scale of Rs. 730-1150 for the Laboratory Assistants of the petitioners' group as well as the Laboratory Assistants working in the Teachers Training Colleges. There is no meaningful, deliberate discrimination and there is no denial of equality. The Laboratory Assistants represented by the petitioners are in the same equivalent category of their pay scales alongwith several heterogenuous groups and, therefore, no relief can be granted in this petition.

13. It is also submitted that in the past, from 1971 till 1989, Laboratory Assistants in the Teachers Training Colleges have been paid the higher pay scale and, therefore, these Laboratory Assistants are also required to be paid the same pay scale. As held earlier, the error or illegality cannot be extended and allowed to be perpetuated and no one can claim the benefit of it on the

basis of doctrine of equality.

14. In the result, the petition is dismissed. Rule discharged. No costs.
